

105TH CONGRESS
2D SESSION

H. R. 4686

To amend titles XI, XVIII, and XIX of the Social Security Act to permit paid staff other than nurse aides and licensed health professionals to provide feeding and hydration assistance to residents in nursing facilities participating in the Medicare and Medicaid Programs (and to provide special training requirements for such staff), and to establish a program to ensure that such facilities do not employ individuals who have a history of patient or resident abuse or have been convicted of certain crimes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 2, 1998

Mr. KENNEDY of Massachusetts (for himself, Mr. BARRETT of Wisconsin, Mr. HASTINGS of Florida, Mr. COSTELLO, Mr. FILNER, Mr. WAXMAN, Ms. KILPATRICK, Mr. STARK, Mr. KENNEDY of Rhode Island, Mr. NEAL of Massachusetts, Ms. SLAUGHTER, Mr. SANDLIN, Mr. UNDERWOOD, Mr. MEEHAN, and Ms. ROYBAL-ALLARD) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend titles XI, XVIII, and XIX of the Social Security Act to permit paid staff other than nurse aides and licensed health professionals to provide feeding and hydration assistance to residents in nursing facilities participating in the Medicare and Medicaid Programs (and to provide special training requirements for such staff), and to establish a program to ensure that such facilities

do not employ individuals who have a history of patient or resident abuse or have been convicted of certain crimes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the “Long-Term Care Pa-
4 tient Protection Act of 1998”.

5 **SEC. 2. SPECIAL REQUIREMENTS FOR INDIVIDUALS PRO-**
6 **VIDING FEEDING AND HYDRATION ASSIST-**
7 **ANCE TO NURSING FACILITY RESIDENTS AND**
8 **SKILLED NURSING FACILITY PATIENTS.**

9 (a) **MEDICAID PROGRAM.**—Section 1919 of the Social
10 Security Act is amended—

11 (1) in subsection (b)—

12 (A) in paragraph (5)(F)—

13 (i) by striking the period and insert-
14 ing ”, or”; and

15 (ii) by adding at the end the following
16 new clause:

17 “(iii) who is described in paragraph
18 (8)(B).”; and

19 (B) by adding at the end the following new
20 paragraph:

21 “(8) **REQUIRED TRAINING OF FEEDING AND**
22 **HYDRATION ASSISTANTS.**—

1 “(A) IN GENERAL.—A nursing facility
2 must not use on a full-time or other paid basis
3 any individual as a feeding and hydration as-
4 sistant in the facility unless the individual—

5 “(i) has completed a feeding and hy-
6 dration assistance training and competency
7 evaluation program approved by the State
8 under subsection (e)(8), and

9 “(ii) is competent to provide feeding
10 and hydration services.

11 “(B) FEEDING AND HYDRATION ASSIST-
12 ANT DEFINED.—In this paragraph, the term
13 ‘feeding and hydration assistant’ means any in-
14 dividual who assists residents in a nursing facil-
15 ity to eat or drink but does not otherwise pro-
16 vide any nursing or nursing-related services to
17 such residents, but does not include an individ-
18 ual—

19 “(i) who is a licensed health profes-
20 sional (as defined in paragraph (5)(G)) or
21 a registered dietician,

22 “(ii) who volunteers to provide such
23 services without monetary compensation,
24 or

1 “(iii) who is a nurse aide (as defined
2 in paragraph (5)(F)).”;

3 (2) in subsection (e), by adding at the end the
4 following new paragraph:

5 “(8) SPECIFICATION AND REVIEW OF FEEDING
6 AND HYDRATION ASSISTANCE TRAINING AND COM-
7 PETENCY EVALUATION PROGRAMS.—The State
8 must—

9 “(A) specify those training and competency
10 evaluation programs that the State approves for
11 purposes of subsection (b)(8) and that meet the
12 requirements established under subsection
13 (f)(10), which shall at a minimum include
14 training concerning—

15 “(i) recommended amounts of food
16 and hydration,

17 “(ii) methods of providing food and
18 hydration, and

19 “(iii) recognition of symptoms of mal-
20 nutrition and dehydration; and

21 “(B) provide for the review and reapproval
22 of such programs, at a frequency and using a
23 methodology consistent with the requirements
24 established under subsection (f)(10)(B).

1 The failure of the Secretary to establish require-
2 ments under subsection (f)(10) shall not relieve any
3 State of its responsibility under this paragraph.”;
4 and

5 (3) in subsection (f), by adding at the end the
6 following new paragraph:

7 “(10) REQUIREMENTS FOR FEEDING AND HY-
8 DRATION ASSISTANCE TRAINING AND EVALUATION
9 PROGRAMS.—For purposes of subsections (b)(8) and
10 (e)(8), the Secretary shall establish—

11 “(A) requirements for the approval of feed-
12 ing and hydration assistance training and com-
13 petency evaluation programs; and

14 “(B) requirements respecting the minimum
15 frequency and methodology to be used by a
16 State in reviewing such programs’ compliance
17 with the requirements for such programs.”.

18 (b) MEDICARE PROGRAM.—Section 1819 of such Act
19 is amended—

20 (1) in subsection (b)—

21 (A) in paragraph (5)(F)—

22 (i) by striking “or” at the end of
23 clause (i);

24 (ii) by striking the period at the end
25 of clause (ii) and inserting “, or”; and

1 (iii) by adding at the end the follow-
2 ing new clause:

3 “(iii) who is described in paragraph
4 (8)(B).”; and

5 (B) by adding at the end the following new
6 paragraph:

7 “(8) REQUIRED TRAINING OF FEEDING AND
8 HYDRATION ASSISTANTS.—

9 “(A) IN GENERAL.—A skilled nursing fa-
10 cility must not use on a full-time or other paid
11 basis any individual as a feeding and hydration
12 assistant in the facility unless the individual—

13 “(i) has completed a feeding and hy-
14 dration assistance training and competency
15 evaluation program approved by the State
16 under subsection (e)(6), and

17 “(ii) is competent to provide feeding
18 and hydration services.

19 “(B) FEEDING AND HYDRATION ASSIST-
20 ANT DEFINED.—In this paragraph, the term
21 ‘feeding and hydration assistant’ means any in-
22 dividual that assists residents in a skilled nurs-
23 ing facility to eat or drink but does not other-
24 wise provide any nursing or nursing-related

1 services to such residents, but does not include
2 an individual—

3 “(i) who is a licensed health profes-
4 sional (as defined in paragraph (5)(G)) or
5 a registered dietician,

6 “(ii) who volunteers to provide such
7 services without monetary compensation,
8 or

9 “(iii) who is a nurse aide (as defined
10 in paragraph (5)(F)).”;

11 (2) in subsection (e), by adding at the end the
12 following new paragraph:

13 “(6) SPECIFICATION AND REVIEW OF FEEDING
14 AND HYDRATION ASSISTANCE TRAINING AND COM-
15 PETENCY EVALUATION PROGRAMS.—The State
16 must—

17 “(A) specify those training and competency
18 evaluation programs that the State approves for
19 purposes of subsection (b)(8) and that meet the
20 requirements established under subsection
21 (f)(8), which shall at a minimum include train-
22 ing concerning—

23 “(i) recommended amounts of food
24 and hydration,

1 “(ii) methods of providing food and
2 hydration, and

3 “(iii) recognition of symptoms of mal-
4 nutrition and dehydration; and

5 “(B) provide for the review and reapproval
6 of such programs, at a frequency and using a
7 methodology consistent with the requirements
8 established under subsection (f)(8)(B).

9 The failure of the Secretary to establish require-
10 ments under subsection (f)(8) shall not relieve any
11 State of its responsibility under this paragraph.”;
12 and

13 (3) in subsection (f), by adding at the end the
14 following new paragraph:

15 “(8) REQUIREMENTS FOR FEEDING AND HY-
16 DRATION ASSISTANCE TRAINING AND EVALUATION
17 PROGRAMS.—For purposes of subsections (b)(8) and
18 (e)(6), the Secretary shall establish—

19 “(A) requirements for the approval of feed-
20 ing and hydration assistance training and com-
21 petency evaluation programs; and

22 “(B) requirements respecting the minimum
23 frequency and methodology to be used by a
24 State in reviewing such programs’ compliance
25 with the requirements for such programs.”.

1 **SEC. 3. ESTABLISHMENT OF PROGRAM TO PREVENT ABUSE**
2 **OF NURSING FACILITY RESIDENTS.**

3 (a) NURSING FACILITY AND SKILLED NURSING FA-
4 CILITY REQUIREMENTS.—

5 (1) MEDICAID PROGRAM.—Section 1919(b), as
6 amended by section 2(a), is amended by adding after
7 paragraph (8) the following new paragraph:

8 “(9) SCREENING OF NURSING FACILITY WORK-
9 ERS.—

10 “(A) BACKGROUND CHECKS ON APPLI-
11 CANTS.—Subject to subparagraph (B)(ii), be-
12 fore hiring an individual, a nursing facility
13 shall—

14 “(i) give the individual written notice
15 that the facility is required to perform
16 background checks with respect to appli-
17 cants;

18 “(ii) require, as a condition of employ-
19 ment, that such individual—

20 “(I) provide a written statement
21 disclosing any conviction for a rel-
22 evant crime or finding of patient or
23 resident abuse;

24 “(II) provide a statement signed
25 by the individual authorizing the facil-

1 ity to request the search and exchange
2 of criminal records;

3 “(III) provide in person a copy of
4 the individual’s fingerprints; and

5 “(IV) provide any other identi-
6 fication information the Secretary
7 may specify in regulation;

8 “(iii) initiate a check of the registry
9 under section 1128F in accordance with
10 regulations promulgated by the Secretary
11 to determine whether such registry con-
12 tains any disqualifying information with
13 respect to such individual; and

14 “(iv) if such registry does not contain
15 any such disqualifying information—

16 “(I) request that the State initi-
17 ate a State and national criminal
18 background check on such individual
19 in accordance with the provisions of
20 subsection (e)(9); and

21 “(II) furnish to the State the in-
22 formation described in subclauses (II)
23 through (IV) of clause (ii) not more
24 than 7 days (excluding Saturdays,
25 Sundays, and legal public holidays

1 under section 6103(a) of title 5,
2 United States Code) after completion
3 of the check against the registry initi-
4 ated under clause (iii).

5 “(B) PROHIBITION ON HIRING OF ABUSIVE
6 WORKERS.—

7 “(i) IN GENERAL.—A nursing facility
8 may not knowingly employ any individual
9 who has any conviction for a relevant
10 crime or with respect to whom a finding of
11 patient or resident abuse has been made.

12 “(ii) PROBATIONARY EMPLOYMENT.—
13 After complying with the requirements of
14 clauses (i), (ii), and (iii) of subparagraph
15 (A), a nursing facility may provide for a
16 probationary period of employment (not to
17 exceed 90 days) for an individual pending
18 completion of the check against the reg-
19 istry described under subparagraph (A)(iii)
20 and the background check described under
21 subparagraph (A)(iv). Such facility shall
22 maintain supervision of the individual dur-
23 ing the individual’s probationary period of
24 employment.

1 “(C) REPORTING REQUIREMENTS.—A
2 nursing facility shall report to the State any in-
3 stance, in which the facility determines that an
4 individual has committed an act of resident ne-
5 glect or abuse or misappropriation of resident
6 property in the course of employment by the fa-
7 cility.

8 “(D) USE OF INFORMATION.—

9 “(i) IN GENERAL.—A nursing facility
10 that obtains information about an individ-
11 ual pursuant to clauses (iii) and (iv) of
12 subparagraph (A) may use such informa-
13 tion only for the purpose of determining
14 the suitability of the individual for employ-
15 ment.

16 “(ii) IMMUNITY FROM LIABILITY.—A
17 nursing facility that, in denying employ-
18 ment for an applicant, reasonably relies
19 upon information about an individual pro-
20 vided by the State pursuant to subsection
21 (e)(9) shall not be liable in any action
22 brought by the individual based on the em-
23 ployment determination resulting from the
24 incompleteness or inaccuracy of the infor-
25 mation.

1 “(iii) CRIMINAL PENALTY.—Whoever
2 knowingly violates the provisions of sub-
3 paragraph (D)(i) shall be fined in accord-
4 ance with title 18, United States Code, im-
5 prisoned for not more than 2 years, or
6 both.

7 “(E) DEFINITIONS.—As used in this para-
8 graph—

9 “(i) the term ‘conviction for a relevant
10 crime’ means any State or Federal crimi-
11 nal conviction for—

12 “(I) any offense described in
13 paragraphs (1) through (4) of section
14 1128(a); and

15 “(II) such other types of offenses
16 as the Secretary may specify in regu-
17 lations;

18 “(ii) the term ‘finding of patient or
19 resident abuse’ means any substantiated
20 finding by a State agency under subsection
21 (g)(1)(C) or a Federal agency that an indi-
22 vidual has committed—

23 “(I) an act of patient or resident
24 abuse or neglect or a misappropriation
25 of patient or resident property; or

1 “(II) such other types of acts as
2 the Secretary may specify in regula-
3 tions; and

4 “(iii) the term ‘disqualifying informa-
5 tion’ means information about a conviction
6 for a relevant crime or a finding of patient
7 or resident abuse.”.

8 (2) MEDICARE PROGRAM.—Section 1819(b), as
9 amended by section 2(b), is amended by adding after
10 paragraph (8) the following new paragraph:

11 “(9) SCREENING OF NURSING FACILITY WORK-
12 ERS.—

13 “(A) BACKGROUND CHECKS ON APPLI-
14 CANTS.—Subject to subparagraph (B)(ii), be-
15 fore hiring an individual, a skilled nursing facil-
16 ity shall—

17 “(i) give the individual written notice
18 that the facility is required to perform
19 background checks with respect to appli-
20 cants;

21 “(ii) require, as a condition of employ-
22 ment, that such individual—

23 “(I) provide a written statement
24 disclosing any conviction for a rel-

1 evant crime or finding of patient or
2 resident abuse;

3 “(II) provide a statement signed
4 by the individual authorizing the facil-
5 ity to request the search and exchange
6 of criminal records;

7 “(III) provide in person a copy of
8 the individual’s fingerprints; and

9 “(IV) provide any other identi-
10 fication information the Secretary
11 may specify in regulation;

12 “(iii) initiate a check of the registry
13 under section 1128F in accordance with
14 regulations promulgated by the Secretary
15 to determine whether such registry con-
16 tains any disqualifying information with
17 respect to such individual; and

18 “(iv) if such registry does not contain
19 any such disqualifying information—

20 “(I) request that the State initi-
21 ate a State and national criminal
22 background check on such individual
23 in accordance with the provisions of
24 subsection (e)(7); and

1 “(II) furnish to the State the in-
2 formation described in subclauses (II)
3 through (IV) of clause (ii) not more
4 than 7 days (excluding Saturdays,
5 Sundays, and legal public holidays
6 under section 6103(a) of title 5,
7 United States Code) after completion
8 of the check against the registry initi-
9 ated under clause (iii).

10 “(B) PROHIBITION ON HIRING OF ABUSIVE
11 WORKERS.—

12 “(i) IN GENERAL.—A skilled nursing
13 facility may not knowingly employ any in-
14 dividual who has any conviction for a rel-
15 evant crime or with respect to whom a
16 finding of patient or resident abuse has
17 been made.

18 “(ii) PROBATIONARY EMPLOYMENT.—
19 After complying with the requirements of
20 clauses (i), (ii), and (iii) of subparagraph
21 (A), a skilled nursing facility may provide
22 for a probationary period of employment
23 (not to exceed 90 days) for an individual
24 pending completion of the check against
25 the registry described under subparagraph

1 (A)(iii) and the background check de-
2 scribed under subparagraph (A)(iv). Such
3 facility shall maintain supervision of the
4 individual during the individuals's proba-
5 tionary period of employment.

6 “(C) REPORTING REQUIREMENTS.—A
7 skilled nursing facility shall report to the State
8 any instance in which the facility determines
9 that an individual has committed an act of resi-
10 dent neglect or abuse or misappropriation of
11 resident property in the course of employment
12 by the facility.

13 “(D) USE OF INFORMATION.—

14 “(i) IN GENERAL.—A skilled nursing
15 facility that obtains information about an
16 individual pursuant to clauses (iii) and (iv)
17 of subparagraph (A) may use such infor-
18 mation only for the purpose of determining
19 the suitability of the individual for employ-
20 ment.

21 “(ii) IMMUNITY FROM LIABILITY.—A
22 skilled nursing facility that, denying em-
23 ployment for an applicant, reasonably re-
24 lies upon information about an individual
25 provided by the State pursuant to sub-

1 section (e)(9) shall not be liable in any ac-
2 tion brought by the individual based on the
3 employment determination resulting from
4 the incompleteness or inaccuracy of the in-
5 formation.

6 “(iii) CRIMINAL PENALTY.—Whoever
7 knowingly violates the provisions of sub-
8 paragraph (D)(i) shall be fined in accord-
9 ance with title 18, United States Code, im-
10 prisoned for not more than 2 years, or
11 both.

12 “(E) DEFINITIONS.—As used in this para-
13 graph—

14 “(i) the term ‘conviction for a relevant
15 crime’ means any State or Federal crimi-
16 nal conviction for—

17 “(I) any offense described in
18 paragraphs (1) through (4) of section
19 1128(a); and

20 “(II) such other types of offenses
21 as the Secretary may specify in regu-
22 lations;

23 “(ii) the term ‘finding of patient or
24 resident abuse’ means any substantiated
25 finding by a State agency under subsection

1 (g)(1)(C) or a Federal agency that an indi-
2 vidual has committed—

3 “(I) an act of patient or resident
4 abuse or neglect or a misappropriation
5 of patient or resident property; or

6 “(II) such other types of acts as
7 the Secretary may specify in regula-
8 tions; and

9 “(iii) the term ‘disqualifying informa-
10 tion’ means information about a conviction
11 for a relevant crime or a finding of patient
12 or resident abuse.”.

13 (b) STATE REQUIREMENTS.—

14 (1) MEDICAID PROGRAM.—

15 (A) EXPANSION OF STATE REGISTRY TO
16 COLLECT INFORMATION ABOUT NURSING FACIL-
17 ITY EMPLOYEES OTHER THAN NURSE AIDES.—

18 Section 1919, as amended by section 2(a), is
19 amended—

20 (i) in subsection (e)(2)—

21 (I) in the paragraph heading, by
22 striking “NURSE AIDE REGISTRY”
23 and inserting “NURSING FACILITY
24 EMPLOYEE REGISTER”;

25 (II) in subparagraph (A)—

1 (aa) by striking “By not
2 later than January 1, 1989, the”
3 and inserting “The”;

4 (bb) by striking “a registry
5 of all individuals” and inserting
6 “a registry of (I) all individuals”;
7 and

8 (cc) by inserting before the
9 period “, and (II) all other nurs-
10 ing facility employees with re-
11 spect to whom the State has
12 made a finding described in sub-
13 paragraph (B)”;

14 (III) in subparagraph (B), by
15 striking “involving an individual listed
16 in the registry” and inserting “involv-
17 ing a nursing facility employee”; and

18 (IV) in subparagraph (C), by
19 striking “nurse aide” and inserting
20 “nursing facility employee or appli-
21 cant for employment”; and

22 (ii) in subsection (g)(1)—

23 (I) in subparagraph (C)—

24 (aa) in the first sentence, by
25 striking “nurse aide” and insert-

1 ing “nursing facility employee”;
2 and

3 (bb) in the third sentence,
4 by striking “nurse aide” each
5 place it appears and inserting
6 “nursing facility employee”; and

7 (II) in subparagraph (D), by
8 striking “nurse aide” each place it ap-
9 pears and inserting “nursing facility
10 employee”.

11 (B) STATE AND FEDERAL REQUIREMENT
12 TO CONDUCT BACKGROUND CHECKS.—Section
13 1919(e), as amended by section 2(a), is amend-
14 ed by adding at the end the following new para-
15 graph:

16 “(9) STATE AND FEDERAL REQUIREMENTS
17 CONCERNING CRIMINAL BACKGROUND CHECKS ON
18 NURSING FACILITY EMPLOYEES—

19 “(A) IN GENERAL.—Upon receipt of a re-
20 quest by a nursing facility pursuant to sub-
21 section (b)(9) that is accompanied by the infor-
22 mation described in subclauses (II) through
23 (IV) of subsection (b)(9)(A)(ii), a State, after
24 checking appropriate State records and finding
25 no disqualifying information (as defined in sub-

1 section (b)(9)(E)), shall submit such request
2 and information to the Attorney General and
3 shall request the Attorney General to conduct
4 a search and exchange of records with respect
5 to the individual as described in subparagraph
6 (B).

7 “(B) SEARCH AND EXCHANGE OF
8 RECORDS BY ATTORNEY GENERAL.—Upon re-
9 ceipt of a submission pursuant to subparagraph
10 (A), the Attorney General shall direct a search
11 of the records of the Federal Bureau of Inves-
12 tigation for any criminal history records cor-
13 responding to the fingerprints or other positive
14 identification information submitted. The Attor-
15 ney General shall provide any corresponding in-
16 formation resulting from the search to the
17 State.

18 “(C) STATE REPORTING OF INFORMATION
19 TO NURSING FACILITY.—Upon receipt of the in-
20 formation provided by the Attorney General
21 pursuant to subparagraph (B), the State
22 shall—

23 “(i) review the information to deter-
24 mine whether the individual has any con-

1 viction for a relevant crime (as defined in
2 subsection (b)(9)(E)); and

3 “(ii) report to the nursing facility the
4 results of such review.

5 “(D) FEES FOR PERFORMANCE OF CRIMI-
6 NAL BACKGROUND CHECKS.—

7 “(i) AUTHORITY TO CHARGE FEES.—

8 “(I) ATTORNEY GENERAL.—The
9 Attorney General may charge a fee to
10 any State requesting a search and ex-
11 change of records pursuant to this
12 paragraph and subsection (b)(9) for
13 conducting the search and providing
14 the records. The amount of such fee
15 shall not exceed the lesser of the ac-
16 tual cost of such activities or \$50.
17 Such fees shall be available to the At-
18 torney General, or, in the Attorney
19 General’s discretion, to the Federal
20 Bureau of Investigation, until ex-
21 pended.

22 “(II) STATE.—A State may
23 charge a nursing facility a fee for ini-
24 tiating the criminal background check
25 under this paragraph and subsection

1 (b)(9), including fees charged by the
2 Attorney General, and for performing
3 the review and report required by sub-
4 paragraph (C). The amount of such
5 fee shall not exceed the actual cost of
6 such activities.

7 “(ii) TREATMENT OF FEES FOR PUR-
8 POSES OF COST REPORTS.—An entity may
9 not include a fee assessed pursuant to this
10 subparagraph as an allowable item on a
11 cost report under this title or title XVIII.

12 “(iii) PROHIBITION ON CHARGING AP-
13 PPLICANTS OR EMPLOYEES.—An entity may
14 not impose on an applicant for employment
15 or an employee any charges relating to the
16 performance of a background check under
17 this paragraph.

18 “(E) REGULATIONS.—In addition to the
19 Secretary’s authority to promulgate regulations
20 under this title, the Attorney General, in con-
21 sultation with the Secretary, may promulgate
22 such regulations as are necessary to carry out
23 the Attorney General’s responsibilities under
24 this paragraph and subsection (b)(9), including
25 regulations regarding the security, confidential-

1 ity, accuracy, use, destruction, and dissemina-
2 tion of information, audits and recordkeeping,
3 and the imposition of fees.

4 “(F) REPORT.—Not later than 2 years
5 after the date of enactment of the “Long-Term
6 Care Patient Protection Act of 1998”, the At-
7 torney General shall submit a report to Con-
8 gress on the number of requests for searches
9 and exchanges of records made under this sec-
10 tion and the disposition of such requests.”.

11 (2) MEDICARE PROGRAM.—

12 (A) EXPANSION OF STATE REGISTRY TO
13 COLLECT INFORMATION ABOUT SKILLED NURS-
14 ING FACILITY EMPLOYEES OTHER THAN NURSE
15 AIDES.—Section 1819, as amended by section
16 2(b), is amended—

17 (i) in subsection (e)(2)—

18 (I) in the paragraph heading, by
19 striking “NURSE AIDE REGISTRY” and
20 inserting “SKILLED NURSING CARE
21 EMPLOYEE REGISTRY”;

22 (II) in subparagraph (A)—

23 (aa) by striking “By not
24 later than January 1, 1989, the”
25 and inserting “The”;

1 (bb) by striking “a registry
2 of all individuals” and inserting
3 “a registry of (I) all individuals”;
4 and

5 (cc) by inserting before the
6 period “, and (II) all other
7 skilled nursing facility employees
8 with respect to whom the State
9 has made a finding described in
10 subparagraph (B)”;

11 (III) in subparagraph (B), by
12 striking “involving an individual listed
13 in the registry” and inserting “involv-
14 ing a skilled nursing facility em-
15 ployee”; and

16 (IV) in subparagraph (C), by
17 striking “nurse aide” and inserting
18 “skilled nursing facility employee or
19 applicant for employment”; and

20 (ii) in subsection (g)(1)—

21 (I) in subparagraph (C)—

22 (aa) in the first sentence, by
23 striking “nurse aide” and insert-
24 ing “skilled nursing facility em-
25 ployee”; and

1 (bb) in the third sentence,
2 by striking “nurse aide” each
3 place it appears and inserting
4 “skilled nursing facility em-
5 ployee”; and

6 (II) in subparagraph (D), by
7 striking “nurse aide” each place it ap-
8 pears and inserting “skilled nursing
9 facility employee”.

10 (B) STATE AND FEDERAL REQUIREMENT
11 TO CONDUCT BACKGROUND CHECKS.—Section
12 1819(e), as amended by section 2(b), is amend-
13 ed by adding at the end the following new para-
14 graph:

15 “(7) STATE AND FEDERAL REQUIREMENTS
16 CONCERNING CRIMINAL BACKGROUND CHECKS ON
17 SKILLED NURSING FACILITY EMPLOYEES.—

18 “(A) IN GENERAL.—Upon receipt of a re-
19 quest by a skilled nursing facility pursuant to
20 subsection (b)(9) that is accompanied by the in-
21 formation described in subclauses (II) through
22 (IV) of subsection (b)(9)(A)(ii), a State, after
23 checking appropriate State records and finding
24 no disqualifying information (as defined in sub-
25 section (b)(9)(E)), shall submit such request

1 and information to the Attorney General and
2 shall request the Attorney General to conduct a
3 search and exchange of records with respect to
4 the individual as described in subparagraph
5 (B).

6 “(B) SEARCH AND EXCHANGE OF
7 RECORDS BY ATTORNEY GENERAL.—Upon re-
8 ceipt of a submission pursuant to subparagraph
9 (A), the Attorney General shall direct a search
10 of the records of the Federal Bureau of Inves-
11 tigation for any criminal history records cor-
12 responding to the fingerprints or other positive
13 identification information submitted. The Attor-
14 ney General shall provide any corresponding in-
15 formation resulting from the search to the
16 State.

17 “(C) STATE REPORTING OF INFORMATION
18 TO NURSING FACILITY.—Upon receipt of the in-
19 formation provided by the Attorney General
20 pursuant to subparagraph (B), the State
21 shall—

22 “(i) review the information to deter-
23 mine whether the individual has any con-
24 viction for a relevant crime (as defined in
25 subsection (b)(9)(E)); and

1 “(ii) report to the skilled nursing fa-
2 cility the results of such review.

3 “(D) FEES FOR PERFORMANCE OF CRIMI-
4 NAL BACKGROUND CHECKS.—

5 “(i) AUTHORITY TO CHARGE FEES.—

6 “(I) ATTORNEY GENERAL.—The
7 Attorney General may charge a fee to
8 any State requesting a search and ex-
9 change of records pursuant to this
10 paragraph and subsection (b)(9) for
11 conducting the search and providing
12 the records. The amount of such fee
13 shall not exceed the lesser of the ac-
14 tual cost of such activities or \$50.
15 Such fees shall be available to the At-
16 torney General, or, in the Attorney
17 General’s discretion, to the Federal
18 Bureau of Investigation, until ex-
19 pended.

20 “(II) STATE.—A State may
21 charge a skilled nursing facility a fee
22 for initiating the criminal background
23 check under this paragraph and sub-
24 section (b)(9), including fees charged
25 by the Attorney General, and for per-

1 forming the review and report re-
2 quired by subparagraph (C). The
3 amount of such fee shall not exceed
4 the actual cost of such activities.

5 “(ii) TREATMENT OF FEES FOR PUR-
6 POSES OF COST REPORTS.—An entity may
7 not include a fee assessed pursuant to this
8 subparagraph as an allowable item on a
9 cost report under this title or title XIX.

10 “(iii) PROHIBITION ON CHARGING AP-
11 PLICANTS OR EMPLOYEES.—An entity may
12 not impose on an applicant for employment
13 or an employee any charges relating to the
14 performance of a background check under
15 this paragraph.

16 “(E) REGULATIONS.—In addition to the
17 Secretary’s authority to promulgate regulations
18 under this title, the Attorney General, in con-
19 sultation with the Secretary, may promulgate
20 such regulations as are necessary to carry out
21 the Attorney General’s responsibilities under
22 this paragraph and subsection (b)(9), including
23 regulations regarding the security, confidential-
24 ity, accuracy, use, destruction, and dissemina-

1 “(1) AVAILABILITY.—The information in the
2 database maintained under this section shall be
3 available, pursuant to procedures maintained under
4 this section, to—

5 “(A) Federal and State government agen-
6 cies;

7 “(B) nursing facilities participating in the
8 program under title XIX and skilled nursing fa-
9 cilities participating in a program under title
10 XVIII; and

11 “(C) such other persons as the Secretary
12 may specify by regulation,

13 but only for the purpose of determining the suit-
14 ability for employment in a nursing facility or skilled
15 nursing facility.

16 “(2) INFORMATION.—The information in the
17 database shall be exempt from disclosure under 5
18 U.S.C. 552.

19 “(3) FEES FOR DISCLOSURE.—

20 “(A) IN GENERAL.—The Secretary may es-
21 tablish or approve reasonable fees for the dis-
22 closure of information in such database. The
23 amount of such a fee shall be sufficient to re-
24 cover the full costs of operating the database.
25 Such fees shall be available to the Secretary or,

1 in the Secretary’s discretion, to the agency des-
2 ignated under this section to cover such costs.

3 “(B) AVAILABILITY OF FEES.—Fees col-
4 lected pursuant to this subsection shall remain
5 available until expended, in the amounts pro-
6 vided in appropriation acts, for necessary ex-
7 penses related to the purposes for which the
8 fees were assessed.

9 “(C) TREATMENT OF FEES FOR PURPOSES
10 OF COST REPORTS.—An entity may not include
11 a fee assessed pursuant to this subsection as an
12 allowable item on a cost report under this title
13 or title XIX.

14 “(D) PROHIBITION ON CHARGING APPLI-
15 CANTS OR EMPLOYEES.—An entity may not im-
16 pose on an applicant for employment or an em-
17 ployee any charges relating to the registry es-
18 tablished and maintained under this section.”.

19 **SEC. 4. EFFECTIVE DATE.**

20 The provisions of and amendments made by this Act
21 shall be effective on and after the date of enactment, with-
22 out regard to whether implementing regulations are in ef-
23 fect.

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